

LABOR RELATIONS  
IN WESTERN GERMANY

by R. TAYLOR COLE



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R. TAYLOR COLE

Visiting Expert Series No. 2

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REPORT RELATING TO ECONOMIC RESEARCH

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October 1948



## FOREWORD

An understanding of the forces influencing the pattern and content of employee-employer relations is essential to a full understanding of what progress is being made in the development of democracy in Germany.

If organized groups and individuals from other nations are to make a contribution to the development of social institutions and social relations in Germany, it is essential that they know and understand the nature of employee-employer relations and the institutions functioning in that field.

The patterns of employee-employer relations being developed in Germany can well make a contribution to the solution of the problem in other industrial societies.

The following report prepared by Professor Cole, who has closely watched the development of industrial relations in contemporary Germany, represents a contribution to such understanding. This comparative study of industrial relations in each of the Western Zones is particularly appropriate in view of the prospective formation of a Western German Government.

*Leo R. Meris*  
LEO. R. MERIS  
Director,  
Manpower Division

MEMORANDUM

An earnest study of the factors influencing the pattern of contacts of employer-employee relations is essential to a full understanding of the factors which are in the development of Germany.

If organized groups and individuals from other nations who are in contact with the development of a new industrial pattern in Germany, it is essential that they know the industrial pattern of employer-employee relations and the industrial pattern in that field.

The pattern of employer-employee relations being developed in Germany can well make a contribution to the solution of the problem in other industrial countries.

The following report, prepared by Mr. Thomas G. Jones, who has closely watched the development of industrial relations in contemporary Germany, represents a contribution to our understanding of this country's industrial relations in view of the industrial pattern in Germany. It is particularly significant in view of the industrial pattern in Germany.

1930. E. Jones  
Director  
Employment Division



# TABLE OF CONTENTS

	PAGE
FOREWORD	
NOTES ON THE AUTHOR	1
PART 1	
LABOR RELATIONS IN THE FRENCH ZONE	
General	2
Labor Law	4
Labor Courts	4
Arbitration and Conciliation	5
Works Councils	5
PART 2	
LABOR RELATIONS IN THE BRITISH ZONE	
Introduction	7
General Organizational Features	7
Trade Unions	8
Employers' Associations	11
General Labor Conditions	12
Labor Courts	15
Conciliation and Arbitration Agencies	16
Works Councils	17
Conclusion	18
PART 3	
FINAL REPORT AND RECOMMENDATIONS	
Scope of Research	20
The General Reorientation Program	20
Labor Courts, Conciliation and Arbitration Agencies, Works Councils	21
BIBLIOGRAPHY	27





## NOTES ON THE AUTHOR

R. Taylor Cole was born in Texas. He received his A.B. degree from the University of Texas and his Ph. D. degree from Harvard University. He has taught at Louisiana State University, Harvard University and since 1935 at Duke University where he is now a Professor of Political Science. He is Chairman of the Research Committee and member of the Executive Council of the American Political Science Association. Since 1945 he has served as Editor of the Journal of Politics. He has studied special aspects of German labor relations in Germany during the years 1933-34 and for shorter periods in 1936, 1937 and 1939. His interest in German labor continued during the years 1942-1945 when he was employed by the U. S. Government in the United States and abroad. His writings in this field include: "The Evolution of the German Labor Front", Political Science Quarterly, Vol. 52, December 1937 pp. 532-558; "Corporative Organization of the Third Reich", Review of Politics, Vol. 2, October 1940, pp. 438-462; "National Socialism and the German Labor Courts", Journal of Politics, Vol. 3, May 1941, pp. 169-197; and "Wartime Theories and Policies of the Third Reich", in Harold Zink and Taylor Cole (eds.), Government in Wartime Europe and Japan (New York: Houghton Mifflin, 1942), pp. 109-128.

The attached reports were prepared when he was serving during the summer of 1948 as a Visiting Expert with the Manpower Division, OMGUS. They were not originally designed for distribution and have been edited for that purpose. The reports bear evidence of their preparation at different dates during the summer.

# LABOR RELATIONS IN WESTERN GERMANY 1/

## PART 1

### LABOR RELATIONS IN THE FRENCH ZONE

#### GENERAL

The following report is based upon discussions held between 8 July and 14 July with the chairmen of the trade union federations and other trade union leaders of Land Baden and Land Rhineland-Palatinate (Rheinland-Pfalz), with the Ministers of Labor of Baden and the Rhineland, with the Minister of Justice and officials of the Ministry of Labor in Land Wuerttemberg-Hohenzollern, with the professors of labor law in Freiburg and Mainz, with certain Catholic leaders in the Rhineland, with several employers, and with a number of other officials and personages..

The present membership of the trade unions in the three Laender of the French Zone is approximately 60,000 in Baden, 80,000 in Wuerttemberg-Hohenzollern, and 225,000 in the Rhineland. The trade union federations in the Laender are still kept sharply separated with only a zonal secretariat in Baden-Baden to perform limited clerical and liaison duties. The postal and railway officials are the only ones who are permitted to have a zonal organization 2/. While there has as yet been no overt move looking toward the creation of separate Christian unions, Catholic intellectuals, in the Rhineland, feel that such a development cannot be avoided in the near future.

Generally speaking there has been some improvement in the food condition in the French Zone during the past six months, with the actual number of calories consumed being somewhat smaller in the Rhineland than in Baden and Wuerttemberg-Hohenzollern. Trade union leaders placed the official allocation "on paper" in Baden at around 1600 calories in areas with less than 20,000 population and the actual amounts received at around 1200 calories.

1/ The views herein expressed are those of the author, and do not necessarily reflect the views of U. S. Military Government. Except where clearly indicated by an editorial note, the findings are those reported by the author.

2/ Einheitsgewerkschaft der Eisenbahner fuer den Bereich der suedwestdeutschen Eisenbahner, "Vereinbarung ueber die Bildung der Betriebsraete bei der Betriebsvereinigung der suedwestdeutschen Eisenbahnen." 23 pp.



One year ago the amount actually received was approximately 800 calories. The chief criticisms are directed at the continued delays and uncertainties in the distribution of foodstuffs, at the administrative inefficiency, and at the continued policy of "living off the land."

As viewed by trade union leaders, there has been some relaxation in the French Military Government policies prohibiting participation in inter-zonal trade union conferences. However, the separateness of the trade union federations in the three Laender, which are lacking in any economic unity, leads to almost complete ignorance in Baden and Wuerttemberg-Hohenzollern of the developments "across the border" in the Rhineland, and vice versa.

Communist influence, which has in the past fed on misery and hunger, has been on the decline. The chief strength in the trade union organizations is in Baden where five out of the ten members of the executive board (Vorstand) of the Federation are reported to be members of the KPD, although this number is out of proportion to the present percentage of Communist members in the unions. This Communist representation in the executive board will explain its original protest (later reversed) against the Marshall plan which was decided upon at a meeting when one of the non-Communist members was absent. Some improvements in food conditions, the accounts of former German prisoners of war who have returned from Russia and better organizational tactics by non-Communist union officials are the chief explanations for the decline in the Communist influence. In the Rhineland, for example, Communist membership in the executive board has been reduced to a single member and in the last election of these officials the Communist candidate for the chairmanship of the trade union federations was defeated by a 2 to 1 majority.

The union leaders have continued to oppose the resort to the strike, all the more as the present financial position of the union will not permit any sustained action. When strikes do come, say certain of the union officials, they would probably take place in a few key enterprises. Besides feeling that there was little purpose in strikes before the currency reform, the trade union leaders have apparently feared that strikes might in some way jeopardize the chances of closer affiliation with the unions in the other Western zones. The present weak financial position of the unions and their current inability to meet continuing financial obligations have led to sharp criticism of the operation and objectives of the currency reform. These union leaders have, however, reported that unemployment has been considerably below expectations. (Editorial Note: These observations were made shortly after the currency reform had been announced).

The most important development involving trade union sponsored schools has been the establishment of one in the Rhineland for the training of works council members. A new group of members is selected fortnightly to participate in the special instructional program.

The general reaction of public officials to the economic results of French occupational policy, as expressed by the Minister of Labor in the Rhineland (CDU), is that it has resulted in a marked increase in both nationalistic and radical rightist and leftist trends. Despite the success of the French cultural program, federalistic impulses have been largely submerged under the impact of these trends.

#### LABOR LAW

In the field of general labor law there has been no legislation of outstanding importance within the past year. French interest has been directed primarily at such problems as labor supply and otherwise French influence on labor law development has been largely of a negative rather than of a positive type. There are a few individual cases of wage agreements between employers and employees, but in general the provisions of the old Wage Orders (Tarifordnungen) of the National Socialist period are still in effect. One of the chief concerns of labor officials in the French Zone, as in Hesse and Wuerttemberg-Baden in the U. S. Zone, has been the lack of an adequate Law for Protection against Unjust Dismissal (Kündigungsschutzgesetz). (Editorial Note: On 11 August 1948 the Wuerttemberg-Baden Landtag enacted a law for protection against unjust dismissals which like the Bavarian law, is closely modeled on certain Sections of the Works Council Law of 1920.) The Bavarian law regarding dismissals without proper notice has been studied with interest in the French Zone and the provisions of the Works Council Law in the Rhineland are basically similar to those in the Bavarian law on dismissals.

#### LABOR COURTS

There have been recent Labor Court developments of significance in all of the Laender of the French Zone. In the Rhineland a new Labor Court Law was enacted by the Landtag on 6 November 1947. (Later dated 3 March 1948).<sup>1/</sup> The new system of courts has not yet gone into operation inasmuch as the chairman of the Supreme Labor Court (Oberstes Arbeitsgericht) who must in turn administer the oath to other labor court chairman has not been designated. Labor disputes have been heard in the ordinary courts, but certain of these courts are refusing now to hear labor cases, with the result that there is a considerable backlog of unsettled disputes in certain areas to go before the new courts when they begin to function. Professor Molitor of the University of Mainz, who has apparently been designated for the position as chairman of the Highest Labor Court, has explained to me that the delay was due to such practical considerations as the necessity of providing some special training for future labor court judges. However, there would also appear to be other reasons for the delay.

<sup>1/</sup> Amtsblatt des Staatssekretariats fuer das Franzoesisch besetzte Gebiet Wuerttemberg-Hohenzollern, 20 January 1948, pp. 25 ff.



In Wuerttemberg-Hohenzollern, provision was made through a Rechtsanordnung 24 October 1946, for carrying out Control Council Law No. 21. Under the original Rechtsanordnung, thirteen Labor Courts and two Land Labor Courts were established. At the present time the draft of a detailed law on Labor Courts has been approved by the Cabinet of Wuerttemberg-Hohenzollern and has also reportedly received the approval of the French Military Government. It will shortly be presented to the Landtag and members of the Cabinet have informed me that it will be enacted.

In Baden a labor court law has been passed by the Landtag and has also reportedly received the approval of the French Military Government. It is expected to be put into effect within the near future.

The labor court legislation, actual and proposed in the three Laender, is based very largely upon the original Labor Court Act of 1926. The provisions of the legislation in the French Zone differ in one material respect from those embodied in the labor court laws of the Laender in the U. S. Zone; that is, the laws in the French Zone provide for three gradations of Labor Courts with a Highest Labor Court at the apex of each system. Otherwise, the provisions of the labor court legislation in the French zonal Laender are, with minor variations, similar to those in the legislation in the U.S. Zonal Laender.

#### ARBITRATION AND CONCILIATION

Only one of the three Laender, Wuerttemberg-Hohenzollern, has taken active steps to provide for arbitration and conciliation agencies as foreseen in Control Council Law No. 35. At the present writing, the draft of a proposed Land Ordinance has been prepared and presented to the Cabinet for approval.

#### WORKS COUNCILS

In Land Rhineland-Palatinate, some works councils had been established after 1945 under the general authorization of Control Council Law No. 22 (Law on Works Councils) of 10 April 1946. The Land Ordinance of 15 May 1947 provides the legal basis for a uniform system of works councils. The right of co-determination (Mitbestimmungsrecht) has been limited primarily to non-economic matters. In addition the Land trade union federation in the Rhineland-Palatinate has proposed legislation looking toward the creation of joint industry and handicraft chambers which will furnish a part of the so-called machinery of self-administration for implementing the socialization program advocated by the trade unions. Chairman Ludwig of the Rhineland-Palatinate Trade Union Federation hopes that all but approximately 30 percent of the industry in that Land will ultimately be in the hands of the cooperatives, and city and Laender governments - with particular emphasis on the role of the new chambers

which are envisaged. Trade union officials expect the drafts of both laws to be presented by the Cabinet to the Landtag in the near future, and they claim that the bills will receive the support of the SPD and CDU. These measures represent the most extensive and complete socialization program which has been outlined for governmental action in the French Zone.

In Wuerttemberg-Hohenzollern some provisional steps have been taken to execute Control Council Law No. 22. In addition, voluntary agreement between the "Landesgemeinschaft der Industrie Wuerttemberg-Hohenzollern" and the Trade Union Federation on works councils was subsequently reached on 29 September 1947. This agreement provided for the right of co-determination in certain social and personnel matters. A proposed law on works councils, prepared by the Ministry of Labor, will soon be presented to the Cabinet. This law goes well beyond previous arrangements and agreements in its provisions regarding the right of co-determination in economic matters.

In Land Baden, an agreement regarding works councils was recently concluded between the trade union federation and the employers associations. In turn this agreement has furnished the basis for the draft of a law which will be presented shortly to the Landtag. The draft provides for broad Mitbestimmungsrecht in economic matters, Article 14 of this proposed law, which provides for united and joint works councils (Gesamtbetriebsrat and gemeinsamer Betriebsrat) might well be noted in the light of U. S. Military Government policy in the U. S. Zone. Union officials and employers in Land Baden expect passage of the law by the Landtag. 1/

It is clear that the Laender in the French Zone are, after a delayed start, moving rapidly in providing legislation dealing with labor courts and works councils. In most but not all respects, they have followed the lead and precedents furnished by the Laender in the U. S. and British Zones.

1/ The law was enacted by the Baden Landtag on 24 September 1948.

## PART 2

### LABOR RELATIONS IN THE BRITISH ZONE

#### INTRODUCTION

The following report has resulted from a field trip to the British Zone from 19 July to 5 August for the purpose of investigating the operation of labor courts, conciliation and arbitration agencies, and works councils. Since the functioning of these agencies must be viewed against a broad background, some observations on general labor conditions have been included. In the preparation of this report, greater stress has been placed on certain trends than on details concerning developments in the selected fields of labor relations.

British Manpower Officers, especially Messrs. Kenny, Pullin, Maxfield, Mackenzie, and Meacham were most cooperative in discussing the chief labor developments in their respective areas and in arranging for all requested interviews. Largely through their friendly assistance, I had the opportunity to visit one of the largest steel plants in the Ruhr, to spend a day at and in one of the coal mines in the Ruhr, to inspect certain trade union and other newspaper establishments and to hear cases in the labor courts. In addition, interviews were arranged with German labor, economics, and labor court officials, employers and managerial representatives, officials of the DGB (German Trade Union Federation, or Deutscher Gewerkschaftsbund) in the British Zone and its affiliated trade unions, and with other representatives of the German community including church dignitaries and political party leaders.

The shortcomings of this report are obvious. Within the limited time at my disposal, I could do little more than gather hasty impressions. In addition, I have not had the opportunity to check my data against the mass of available material. The results must consequently be marked by superficiality and some inaccuracy.

#### GENERAL ORGANIZATIONAL FEATURES

The general organization of the British Manpower Administration exhibits certain features which stand in contrast to those found in the U.S. Zone. First, the higher officials in the British Manpower Administration are almost invariably permanent civil servants attached to the British Ministry



of Labor. Second, the work of the British Manpower officials has been supplemented and assisted by the activities of the Central Labor Office (Zentralamt fuer Arbeit) in Lomgo. While the degree of authority of the Central Labor Office has depended upon the discretion of the British Military Government, the Central Office has since its creation in 1946 played an important role in labor, housing, and resettlement activities 1/. It is assumed that the functions of the Central Labor Office will be liquidated, and that at least a part of the staff will be employed by the new Bizonal Labor Department which will shortly be authorized and established as part of the bizonal economic administration 2/. Third, the British agencies have continued until the authority of Decree No. 57 to exercise a greater degree of control in the field of labor relations than have the American authorities in the U. S. Zone.

### TRADE UNIONS

In contrast to the separate trade union organizations found in the Laender of the U. S. Zone, the leading trade union organization in the British Zone, the DGB, is a unified and centralized one with its headquarters in Duesseldorf. There have been certain organizational differences between the DGB and the Federations in the U. S. Zone. For example, the unions of railway and postal employees have, at least until recent changes, had a separate status in the Land federations in the U. S. Zone, whereas they have been grouped together in the Industrial Union of Public Services, Transport, and Traffic Workers of the DGB. There has also been some variation between the two Zones in the methods and types of organization of certain white collar and professional employees. In both Zones, the basic type of affiliate of the Federations consists of industrial unions.

1/ Das Zentralamt fuer Arbeit in der Britischen Zone, "Bericht ueber die Taetigkeit von Juli 1946 bis Juli 1948," pp. 1-4. The official publication of the Central Labor Office, "Arbeitsblatt fuer die britische Zone" might be particularly mentioned.

2/ "Ordinance concerning the establishment of a Manpower Department for the Combined Economic Area" (Ordinance No. 44) was adopted by the Economic Council on 17 June 1948 and by the Laenderrat on 21 June 1948. After approval by the Bipartite Board on 30 August 1948, the ordinance was promulgated by the bizonal economic administration on 13 September 1948.

As of early June 1947, the DGB had approximately 2,546,877 members, whereas non-federated unions had only 17,387 members.<sup>1/</sup> The industrial unions included in the DGB vary in size and importance, the two largest in the British Zone being the Industrial Union of Metal Workers with 639,482 members and the Industrial Union of Mine Workers with 458,511 members. A considerable part of the strength of both of these Industrial Unions is concentrated in North Rhine-Westphalia. In the Hanseatic City of Hamburg, the largest union is that of "General Workers" with 46,537 members, a figure which includes approximately 10,000 dock workers out of the total of 268,909 union members. In Schleswig-Holstein the "Farm Workers" is the largest union with 46,725 members out of a total of 212,290 union members.

The DGB is under the iron control of its President, Hans Boeckler, who had until quite recently succeeded in maintaining a high degree of unity in this organization. Such organizations must run counter to decentralization and democratization pressures from below, and the DGB has suddenly run headlong into an accumulation of these pressures. Furthermore, the necessity of reconciling KPD, SPD, and CDU points of view within a single organization has resulted in a great effort to maintain at least an outward position of political neutrality. However, during the earlier period there were evidences of some collaboration between the SPD and KPD members, and during the more recent period a shift to closer cooperation between the SPD and CDU groups, both in union and works council elections.

Generally speaking the leaders of the DGB are critical of the reparations and dismantling policies of the Military Government, of the delays in returning DMF property in fee simple to its original owners and of the wage stop during a period of recent price increases of articles which are not now subject to price control. There is a heavy emphasis upon a rather vague program of economic democracy (Wirtschaftsdemokratie) and economic self-administration (Wirtschaftsselbstverwaltung) <sup>2/</sup>.

1/ Excluding the Salaried Employees Union (Deutsche Angestellten-Gewerkschaft, or DAG) which was excluded recently by the DGB, and the Railway Union which merged with the Land railway unions in the U. S. Zone in March 1948 to form a bizonal union. Their memberships, as of 1 August 1948, had approximate memberships of 154,000 and 135,000 (in the British Zone only) respectively. The total membership of the Bizonal Railway Union in the Bizonal Area was about 340,000.

2/ Der Wirtschaftspolitische Ausschuss der Gewerkschaften der Britischen Zone, "Wirtschaftsdemokratie, Vorschlag zum Aufbau einer wirtschaftlichen Selbstverwaltung." Bielefeld, January 1947. 8 pp.

Bundesvorstand des Deutschen Gewerkschaftsbundes (DGB), "Wirtschaftskammergesetz. Entwurf eines Gesetzes ueber die Errichtung und Aufgaben von Wirtschaftskammern." Duesseldorf, July 1947. 10 pp.

this program has been associated with a demand for a wide right of co-determination (Mitbestimmungsrecht) in the workshops. There is little Marxist jargon used by non-Communist members of the DGB and the prevailing pragmatic point of view accepts an evolutionary socialist program which bears a strong resemblance to the revisionism of Bernstein.

The DGB officials in the British Zone, particularly Herr Boeckler, consider the trade unions in both the U. S. and French Zones to be "more conservative" than their own. They explain this phenomenon on various grounds, placing somewhat less emphasis on the different types and qualities of leadership and somewhat heavier emphasis on the greater degree of industrialization in the British Zone. There is a strong belief that the type of centralized and unified organization with its basis in the industrial unions found in the British Zone represents the most advanced stage in post-war German trade union development and should furnish the pattern for the bizonal or trizonal trade union organization in the future.

As indicated the problem of maintaining internal unity in the DGB has, despite the able leadership and firm discipline of Boeckler (DGB chairman), become a difficult one in the past few weeks. The exclusion of the employees organization, the DAG, has paved the way for a bitter fight between the DGB and the DAG. The real dispute between the leaders of these organizations, aside from personal differences, involved the degree of freedom to be allowed the DAG to organize non-manual workers in industry. The decision reached at the Extraordinary General Congress of the DGB in Tecklenhausen in June 1948 followed rigidly the policy of "one industry, no poaching". (Editorial Note: After futile negotiations between the DGB and the DAG, the latter organization was expelled from the federation in July. The DGB executive board announced the establishment of a "Commerce, Banking, and Insurance Union" which all "loyal" salaried employees were invited to join.)

There has also been a separatist movement of the Railway Union which has resulted in two competing unions of railwaymen in the British Zone after the expulsion of the Railway Workers Union from the DGB (Editorial Note: The decision to form a separate Railway Union was made in October 1946 prior to the formation of the DGB in early 1947. The preliminary organization plan of the DGB however provided that all transport workers would join the Public Services and Transport Union. This process took place largely in Land North Rhine-Westphalia, whereas in other areas of the British Zone railwaymen joined the separate railway union which applied to the DGB for admission as an autonomous union. This request was denied by the DGB in February 1948 which advised the railway union to become a department within the Public Services and Transport Union. Soon thereafter, in March 1948, the railway union in the British Zone merged with the Land railway unions in the U. S. Zone to form the first bizonal union. On 30 September 1948 the Public Services and Transport Union reached an agreement with the bizonal railway union whereby all remaining Reichsbahn members in the British Zone would be transferred to the latter organization on 1 October 1948).



The future relationship of the railway union with the DGB is still unclear as a result of current negotiations. Whatever the outcome may be, the present relationships between the DGB officials and the officials of the Railway Union who are not united in the Bizonal Area and who have obtained formal approval for their organization from the U. S. and British Military Governments are far more cordial and cooperative than those between the DGB and the DAG. Among the railwaymen themselves, the locomotive engineers and firemen have in turn made some moves for a distinct organization through the establishment of the Locomotive Drivers and Firemen's Union. The civil service officials (Beamten) are organizing separately in parts of Northern Germany. Certain groups of teachers have grown restive in the DGB. In addition, there have been small and unimportant dissident groups such as that started by a protestant minister in Lower Saxony.

The chief potential danger to a unified trade union movement in the British Zone, in my opinion, lies within certain Catholic circles. It is true that the initial moves in these circles to organize separate Christian unions in 1947 were stopped. It is also true that both DGB and British Manpower officials discount the possibilities of any separate Christian unions in the near future. I believe that they are underestimating the possible significance of the continued suspicion in Catholic circles of what they term "the anti-Christian attitude of certain Socialist trade union leaders" in an organization which includes "atheistic" Communist members. The kernel for a future Christian trade union movement can possibly be found in the 200,000 dues-paying members of the Catholic Workers Circle (Katholischer Arbeiterverein), about 80 percent of whom are also union members, which is centered in North Rhine-Westphalia and surrounding areas and which finds its ideological roots in Rerum Novarum and Quadragesimo Anno. If the Communists remain within the DGB, I predict a separate Christian trade union movement to begin in the not too distant future. If, on the other hand, the Catholic membership is retained in the DGB, one may expect added efforts to secure the expulsion of Communist members - particularly after Boeckler has retired and after British Military Government control has been liquidated.

#### EMPLOYER ASSOCIATIONS

The early policy of the Allied Military Governments in Germany for obvious reasons did not permit the formation of employer associations. Until recently no encouragement has been offered for their formation. Despite the delays, employer associations have been appearing in the British Zone on a zonal, Land, and local area basis. The Land organizations include the Employers' Association Committee North Rhine-Westphalia (Duesseldorf),

the Central Office of the Trade Associations of Lower Saxony (Hannover), the Social Political Committee of Employers' Associations of Greater Hamburg (Hamburg), and the Employers' Federation of Kiel (Kiel). The official recognition given these associations has come by indirection, i.e., through invitations to participate in advisory bodies or to attend meetings which are officially sponsored.

In January 1948, a meeting of representatives of the Employers' Organizations was held under the auspices of the British Manpower Division in Wuppertal. At this meeting, the status of the Employers' Organizations was described by Wilhelm Vorwerck, Chairman of the Preparatory Committee for the Formation of Employers' Organizations in North Rhine-Westphalia, as follows: "The Technical Employers' Organizations in the individual Laender of the British Zone met in Regional Committees. These Regional Committees together with the Technical Associations formed the Cooperative Body of the Employers in the British Zone. This cooperative body, representatives of which you see before you today, unfortunately only consists so far of a very loose combination, without statutes and regulations."

At the Wuppertal conference the employers, who at that time represented the weaker bargaining position, welcomed the idea of collaboration with the employees. A joint meeting of representatives of the Employers' Organizations and of the Trade Union Organizations was held in Lemgo on March 4, 1948, "to explore the ground for the establishment of some form of regular joint consultative machinery and joint negotiation machinery between employers and trade unions." In the face of decided coolness from the trade union ranks, a decision to set up a joint committee consisting of employers and employees was agreed upon. This joint committee has met only once and at this meeting on 30 April, it spent its entire time discussing subjects other than those for which the meeting was called. Recent developments, in other words, have not indicated any breakdown in the mutual hostility of German employers and employees or the birth of a new faith in British and American techniques for settling differences.

#### GENERAL LABOR CONDITIONS

Since the food and protest strikes in 1947-48, there has been no organized strike movement on a broad scale in the British Zone. There have been a few strikes growing out of purely local conditions, such as the sporadic strikes among the dock workers in Hamburg where Communist strength is strong and local conditions are fertile for such action. In late July and early August, 1948, there were threats of a strike among the low paid agricultural workers in Northern Germany, and especially in Lower Saxony

and Schleswig-Holstein. Since the threats came at a most critical period, the British Military Government issued a new Tariff Order (Tarifordnung) in order to forestall the threatened action. The financial weakness of the unions since currency reform has had a retarding effect upon strike agitation, but many trade union leaders feel that there will be an outbreak of strikes on the wage issue during the coming spring unless effective steps can be taken to hold down rising prices.

One major trend which has been marked in the British Zone during the past year has been the decline of Communist strength in labor organizations and in works council representation. The last Communist Minister (Senator) in any of the British Laender has recently been the subject of a non-confidence vote by the City Parliament (Buergerschaft) in Hamburg. There is no Communist member of the Executive Committee of the DGB or any Communist chairman of the industrial unions, although both the industrial unions of Mine Workers and of Metal Workers have strong Communist representation in their executive board. The prevailing belief is that the present chairman of the Industrial Union of Mine Workers, August Schmidt, will be reelected by a more comfortable margin than the five vote majority which he secured last year over his Communist opponent, Wilhelm Agatz.

The general statistics on works council elections for the whole British Zone were not available and the election of the works councils in the coal industry will not be held until November. However, the statistics for the Hamburg area will be indicative of the general trend. In 1947, the party membership of those works councils for which statistics were available showed 688 SPD, 392 KPD, and 392 non-party members; in 1948, the results indicated 834 SPD, 192 KPD, and 396 non-party members. In Hamburg, as in other parts of the British Zone, specified KPD strongholds among the works councils remain. For example, the General Works Council for the 12,000 dock workers, approximately 2000 of whom have been released since currency reform, has 18 KPD and 1 SPD members following the 1948 election. The decline in Communist representation in the works councils may explain the shift in party strategy since 1947 from an emphasis on the works councils to an emphasis on the trade unions.

The reasons given for the decline in Communist strength are several. One has been the generally favorable reaction of workers to currency reform. In addition, the financial status of the KPD has been reduced to a low ebb and has necessitated a sharp reduction in the number of paid functionaries and in its propaganda output. Another factor has been the improved election techniques employed by the trade unions, which prevent a repetition of the successes achieved by the well-organized Communist minority groups in 1946-1947 in works council elections. The Berlin situation and,



to a lesser extent, the seizure of Czechoslovakia have produced reactions in some quarters which are unfavorable to the Communists. The stories of former prisoners of war, recently returned from Russian prison camps, have been a factor. Despite the admitted decline in strength, competent observers caution against exaggerating KPD defections in labor ranks. The hard kernel of the party has not been affected, they feel, and it is in an ever-present position to make its influence felt in selected key enterprises and areas.

The demands of the trade unions for the socialization of the key industries in the Ruhr and the recent action of the Landtag of North Rhine-Westphalia directed toward that end raise questions which are basic in the field of labor relations. For this reason, reference may be made to two arbitrarily selected problems in the Ruhr, the representation of the trade unions in the iron and steel "severance" plants and the much discussed question of labor's role in increased coal production.

In the existing twenty-five "severance" iron and steel plants, organized labor is guaranteed representation of at least five out of eleven members on the Board of Supervision (Aufsichtsrat).<sup>1/</sup> One of the three members of the Managing Board, selected by the Board of Supervision, is the Labor Director who is appointed following recommendations from labor unions. A certain degree of co-determination is allowed the works councils in these plants, but the North German Iron and Steel Control has to the present resisted demands for an extension of present labor participation in the management of the plants. Though the ultimate control over the plants is in the hands of the Controller, there is little evidence of direct interference from this source in the handling of labor relations at the plant level. Generally speaking, organized labor has expressed satisfaction with the internal organization of the iron and steel plants and feels that the degree of labor representation in works councils, Board of Supervision and even Management Board is a step -- but only a step -- in the achievement of their ultimate aims of socialization of these establishments. The employer representatives are bitterly opposed to this trend, but they have not expressed themselves vigorously to the present time.

The complaints of the miners in the Ruhr coal industry, which in contrast to iron and steel is under joint U.S./U.K. control, have been widely publicized and are the objects of continuing study. The following cursory observations may be added to the many substantial studies which have been made of the problem. While the miners complain bitterly that some of their back wages, based on piece-work calculation at the end of the month, was paid at the ratio of 1:10 rather than 1:1 as desired after currency reform, the present real wages of the miners are probably as high, if not higher, than those of any major group of industrial workers in Germany. Typical workers, with whom I talked in the mines, were earning from 11 to 12 RM 2/ per day

<sup>1/</sup> W. Harris Burland, Memorandum: Workers Responsibility for Management of Reorganized Iron and Steel Works, July 11, 1947, pp.2-3.

Die Entflechtung und Neuordnung der Eisenschaffenden Industrie, April 1948, Secs. 47/50.

<sup>2/</sup> Payments after currency reform were due in Deutsche Mark (DM).

or between 65 and 75 RM for a six-day week and eight-hour day on the piece-work basis on which they operate. Food today appears to be comparatively adequate, except for those miners who share with large families. Labors' objections to most types of incentive systems, including the latest varieties, appear to be well founded in the eyes of both managerial officials in the mines and of labor officials in the U. S./U. K. Coal Control Board. Whatever their justification at the time of their introduction, incentive systems except in the form of increased monetary wages for increased production and efficiency would not seem to be justified. In fact, it may well be that the spurts in coal production which have been achieved in the past after the introduction of certain of these incentive systems have been of a temporary character and have been achieved at the sacrifice of the orderly and necessary steps which are essential for a sustained increase in coal production.

Despite the rise in coal production which has resulted from a better screening of workers, the increase in the number of workers, certain technical improvements, better food, and propaganda, there are three basic barriers which must be hurdled in the future. The first, and easily the most important of these is improved housing. A casual examination of the living quarters of the miners, and particularly of the new recruits, indicates that the conditions range from bad to intolerable. For this reason, added efforts should be made to increase the supply of lumber, the lack of which is the chief factor causing the serious delay in the two-year housing program. Second, there are the various material shortages, particularly of steel for use in the mines, and the limited supply of electricity. Third, there are the uncertainties regarding the future ownership of the mines. A return of the ownership of the mines to private hands and an exclusion of Germany from effective future participation in the control and distribution agencies will probably have a serious and lasting retarding effect upon the work of the miners.

#### LABOR COURTS

In July 1948, there were five Land Labor Courts and forty-eight Labor Courts in the Laender of the British Zone. Two of the Land Labor Courts and twenty-seven of the labor courts were in the single province of North Rhine-Westphalia. Unlike the situation in the U. S. and French Zones, there has been no Laender legislation in the British Zone to implement Control Council Law No. 21.

The development and functioning of the courts in the British Zone have not been essentially different from that in the U. S. Zone. Under the provisions of Control Council Law No. 21 which permits their selection, a considerable percentage of non-legally trained judges have been chosen as

chairman of the labor courts. The percentage varies from Land to Land, Schleswig-Holstein having a majority of "lay" judges and North Rhine-Westphalia a majority of legally-trained judges. A considerable proportion of the non-legally trained judges have served as former functionaries of the trade unions where they often served in legal advisory capacities. Their average age is high. The legally-trained judges have tended to be critical of the work of some of their lay colleagues. In all of the Laender there has been a sharp increase in the number of cases coming before the labor courts since currency reform. In North Rhine-Westphalia the number of cases during the second half of June was approximately 33 percent higher than for the average of the preceding year. As in the U. S. Zone, a large percentage of the disputes coming before the labor courts are settled by conciliation procedure.

The chief criticisms of the provisions of Control Council Law No. 21 have been directed at the three year term for Labor Court judges (by the judges themselves), the sharp separation of the labor courts from the ordinary courts and the excessive control by the Minister of Labor in contrast to the Minister of Justice over the courts (by the employers and by certain of the legally trained labor court judges) and the lack of a final court of appeal to which cases can be taken from the Land Labor Courts (by all parties). To remedy the last defect British officials, with the concurrence of employers and employees representatives, agreed some months ago to establish a Supreme Labor Court for the British Zone. Professor Nipperdey of the University of Cologne had been agreed upon as the chairman. The proposal was dropped as a result of subsequent bizonal labor developments. In view of the extent to which labor court judges are in fact legislating in the labor law field where such questions as Protection against Dismissal (Kündigungsschutz), Operational Risk (Betriebsrisiko), etc., are involved, there appears strong justification for the early establishment of a Supreme Labor Court.

#### CONCILIATION AND ARBITRATION AGENCIES

The existing conciliation and arbitration machinery in the British Zone has been set up on the basis of Control Council Law No. 35 and the implementing Industrial Relations Directive No. 29 of 31 December 1946. The restricted scope permitted employers and employees under the existing controls has, of course, limited the possible role of any conciliation and arbitration agencies. Conciliators (Sachverständige fuer das Schlichtungswesen) have been appointed in accordance with the prescribed procedure in each of the Laender. Panels of employer and employee representatives for arbitral purposes also exist. If there were serious use made of conciliation procedure, the number of conciliators - one in all of North Rhine-Westphalia - would be ridiculously inadequate. As a matter of fact, however, the total number of cases which have been brought before the Conciliators have not numbered more than a dozen. In short, the experience in the British Zone has been similar to that in the U. S. Zone.



The provisions in the basic program of the DGB, as approved by its executive board (Vorstand) in 1947, calling for the encouragement of "voluntary conciliation" ("Das Schlichtungswesen auf freiwilliger Grundlage") 1/ does not, in my opinion, represent the prevailing point of view of most trade union members, or indeed of German employers. As a matter of cold fact, the German officials do not understand the neutrality of a Conciliator or the possibility of effective functioning except where statutes provide for compulsory methods to compel submission to arbitration by the parties and for binding decisions of arbitral bodies. As Dr. Auerbach, Vice President of the Central Labor Office (Zentralamt fuer Arbeit) has strongly expressed it, "both workers and employers hate Control Council Law No. 35. The procedure is not understandable to them and is too cumbersome for their purposes". Even as successful and as respected a Conciliator as Dr. Stenzel, Conciliator for the Hanseatic City Hamburg (Hansestadt Hamburg), is extremely critical of the functioning of the machinery set up under Control Council Law No. 35 and is very dubious of its success.

The deep-seated suspicion with which German employers and employees have traditionally viewed each other has not diminished, and encourages a continued reliance upon state legislation which provides compulsory techniques for settling industrial disputes. While the British Manpower Officials are continuing in their determined efforts to indoctrinate the Germans along different lines, I am doubtful if they have succeeded to any extent. When the Germans are left to their own devices, I anticipate a speedy return to the pre-1933 system of conciliation and arbitration with its compulsory features.

#### WORKS COUNCILS

The works councils in the British Zone are based solely on Control Council Law No. 22. The DGB has prepared a Model Works Agreement which has been widely used as the basis for the individual agreements in the separate workshops 2/. Most of these agreements provide for a considerable amount of co-determination in social and personnel matters but not in economic questions. The opinions of the trade union leaders differ on the matter of works council legislation for the future. Some of them favor a detailed statute modelled on the old Works Council Law of 1920, with more specific

1/ Bundesvorstand und Bundesbeirat des Deutschen Gewerkschaftsbundes fuer die britische Zone, "Zur Verfassungsfrage, grundsatzliche Forderungen der Gewerkschaften zum Abschnitt 'Arbeit und Wirtschaft' in den neuen Landesverfassungen," Art. 198, August 1947.

2/ At Wuppertal the employers drew up a model works agreement (Betriebsvereinbarung). The document bears no title.

and greater rights of co-determination, whereas others favor the "present latitude" which Control Council Law No. 22 permits. In general the trade unions appear to work in closer harmony with the works councils at the present time, perhaps due in part to the decline of Communist strength in the works councils.

The chief subject of controversy involving the works council concerns the future of the right of co-determination (Mitbestimmungsrecht). As previously mentioned the Industrial Union of Mine Workers has made demands for broad powers of co-determination in the coal industry. Certain agreements which have been approved by both management and the works councils in iron and steel plants have been turned down on the grounds that they provided too broad co-determination for the works councils. In these developments, the projected legislation in Bremen and the Hesse Works Council Law have been widely examined and cited. Another type of problem involving co-determination in the British Zone is illustrated by the Works Agreement between the "General Works Council" in the public services, composed of representatives of civil servants, employees and workers, and the Government of Schleswig-Holstein in January 1948. Article 2 of this agreement provides wide powers of co-determination in the public services. A similar type of agreement between the then unified DGB, representing employees in the public services, and the Government of Hamburg was subsequently rejected by the British Military Government as being in violation of Policy Instruction No. 15 of 15 September 1947, dealing with the Organization and the Administration of the Public Services. At the end of July 1948, steps were being taken to amend the original agreement in order to bring it into line with British Military Government Directives and Instructions.

#### CONCLUSION

By way of summary, the organization and machinery for handling labor relations in the British Zone are somewhat different from that in the U. S. Zone. British Manpower agencies have continued to exercise greater control in the field of labor administration than have the corresponding American agencies. The Central Labor Office (Zentralamt fuer Arbeit) in Lemgo, upon which considerable reliance has been placed by British authorities has no counterpart in the U. S. Zone. The zonal trade union organization in the British Zone stands in sharp contrast to the separate Laender organizations of the U. S. Zone, and these differences present difficulties in the present moves to unify the trade unions in Western Germany. At the present moment rifts are appearing in the ranks of the highly-centralized DGB which portend bitter internal fights, and more fundamental divisions may result in the

future creation of separate Christian trade unions. Employer associations are beginning to receive official recognition and efforts, rather fruitless so far, have been made to bring representatives of these associations into closer working relationships with trade union representatives. The improvement in the outlook of the workers since currency reform and the increases in food allocations have contributed to the several factors which have made for a decline in Communist strength in the unions and in the works councils. One difference between the Zones lies in the absence of Laender legislation in the British Zone for implementing the provisions of Control Council Laws Nos. 21, 22, and 35. Otherwise, the general developments involving labor courts, conciliation and arbitration agencies and works councils have followed the same general pattern and have been marked by the same problems as in the U.S. Zone.



## PART 3

### FINAL REPORT AND RECOMMENDATIONS

#### SCOPE OF RESEARCH

The following report is based on three months of work in Berlin and in the three Western Zones of Germany. During this period, I was primarily engaged in field investigation of the operation of labor courts, conciliation and arbitration agencies and works councils.

Any cursory examination of labor relations in present-day Germany will indicate that long-range solutions for most problems must be found in the education field. I have therefore prefaced certain conclusions regarding labor courts, conciliation and arbitration agencies and works councils with some recommendations on labor research and worker education.

#### THE GENERAL REORIENTATION PROGRAM

The general reorientation program of Military Government might profitably include the following projects as being of particular interest to the Manpower Division:

1. A study of "Representative German Industrial Communities with Reference to Work and the Role of Workers' Organizations". This proposed project, which has been developed by a member of the Manpower Division, has been proposed to the appropriate authorities for final approval and action.

2. The employment for a one-year period of one, or possibly two, Workers Education Specialists who would work in the Laender of the U.S. Zone. Suggestions for the creation of such positions have previously been made by the Land Manpower Adviser for Wuerttemberg-Baden. If considered desirable, the selection of such Specialists could be made in conjunction with the Division of Religious and Cultural Affairs. The provision for these Specialists would be in keeping with the interest previously exhibited by the Manpower Division in inviting individuals to Germany to make technical studies of worker education here.

3. More adequate opportunities for German trade unionists to study in the United States. I realize fully the difficulties which have stood in the way of providing facilities for selected persons from the labor movement

to study in the United States and recognize that certain European countries, especially England and Sweden, have been considerably more active in arranging student exchanges for workers than has the United States. In addition, selected individuals, chosen from labor ranks in the United States, and other students, whose interest may lie in pursuing research on German labor problems might be encouraged to work in German institutions. Dr. F.J. Furtwaengler, the Director of the Akademie der Arbeit in Frankfurt which is operated in conjunction with the University Frankfurt, has recently indicated that the Akademie would be willing to pay the expenses of three American students who would be selected to study in that institution. This proposal has been referred to the appropriate U. S. officials and initial steps have been taken looking toward its acceptance.

4. The selection of a competent person under the Visiting Experts' program to make a study of the teaching of German labor law in the German universities. In such a study special attention might be devoted to the contents of the courses, the training and background of the professors, and the nature of the state examinations insofar as Labor Law (Arbeitsrecht) is concerned. One specific objective would be to ascertain the extent to which certain distinctive Nazi concepts in the field of labor law continue to receive acceptance. One reason for suggesting this study is the fact that much of the instruction in Labor Law is being given by individuals who were too frequently able to adapt their writings to the requirements of the Nazi regime after 1933. Many of these writings are still widely used as text books in the universities and as source books in the labor courts. The results of such a study might be published and be made available to trade unions and to authorities who are responsible for appointing labor court judges and who are consequently interested in the developments in the German legal faculties.

#### LABOR COURTS, CONCILIATION AND ARBITRATION AGENCIES, WORKS COUNCILS

The following general conclusions and recommendations regarding labor courts, conciliation and arbitration agencies and works councils may be presented:

1. Labor Courts. The German labor courts have been successfully re-instituted in all three of the Western Zones along essentially pre-1933 lines. Their operation has met with the general approval of the trade unions, of German employers and of German governmental officials. Nevertheless, there are a number of changes which might advantageously be made. For example, the three-year term for labor court judges is too short; the procedure in the courts might be simplified in some respects; and the method of selecting labor court judges places too heavy a premium on the approval of opposing economic interest groups and final action by a political ministry. However, these are matters which should probably be left for later consideration by the Provisional German Government.

One major innovation might well be made at the present time, and that is the establishment of a Supreme Labor Court in the Bizonal Area. The existing situation is chaotic. Land Labor Courts (Landesarbeitsgerichte) in the various Laender of the British and U. S. Zone are deciding in contradictory fashion on such questions as Operational Risk of the Enterprise (Betriebsrisiko), Protection against Unjust Dismissal (Kündigungsschutz), etc. This situation is all the worse in Laender where there is more than one Land Labor Court and where these courts issue conflicting decisions.

Almost without exception German trade union officials and employer representatives advocate the early creation of such a court. At the recent conferences of labor ministers and of judges of the Land Labor Courts in the Western Zones, resolutions have been passed urging the establishment of a Supreme Labor Court (Oberstes Arbeitsgericht). Authorities of the British Military Government in conjunction with representatives of both the employer and employee groups in the British Zone, had decided some time ago upon the establishment of a Supreme Labor Court for the British Zone. This action was suspended due to the bizonal labor developments. (The Landtage of the French Laender are establishing labor courts of third instance called Supreme Labor Courts in the separate Laender.

Furthermore, the Bizonal Economic Council (Wirtschaftsrat) enacted Ordinance No. 32, which made provisions for the "administration of justice in labor and social matters" and which consequently would have permitted the establishment of a Bizonal Supreme Labor Court. In view of this general desire for the establishment of a Supreme Labor Court in the bizonal area and the urgent need for its creation at the present time, it is felt that the United States Military Government policy regarding the establishment of such a body might properly be re-examined 1/.

In considering the establishment of a Supreme Labor Court the following questions would need examination:

a. Legal. The Legal Group of OMGUS in passing on Economic Council Ordinance No. 32 pointed out that a specific authorization for the establishment of Bizonal labor courts would be required "in view of such special problems as determination of the relationship of such courts to the Bizonal High Court" and recommended the deletion of Clause "e" of Article I(1) on the grounds that "Military Government policy is against the establishment of such special courts at the present time." It is respectfully submitted that this objection as applied to separate labor courts does not adequately take into account the case law development of German labor law in contrast to that of codified German civil and criminal law.

1/ Editorial Note: On 15 July the Bipartite Board excluded the question of labor courts which had also been contained in this ordinance, as the definition of functions between the Laender and the central government is to be considered by the Germans in the near future in connection with the establishment of a Western German government.



b. Organizational. There are some differences of opinion as to the proper relationship of a Supreme Labor Court to the highest regular court and as to the proper ministry which would exercise administrative supervision over the Court. Generally speaking, German employers and some legally trained labor court judges favor a Supreme Labor Court as a panel or division of the High Court, a relationship which would be comparable to that existing between the old Supreme Labor Court (Reichsarbeitsgericht) and the Supreme Court (Reichsgericht). The same groups consequently also favor administrative control in the hands of the Department of Justice. On the other hand, the German trade unions and a large percentage of the labor court judges favor a Supreme Labor Court which is completely separate from the High Court and which would come under the administrative supervision of the Director of the Bizonal Manpower Department.

There are strong arguments which can be presented in support of the point of view represented by the trade unions. One justification for the separateness of the courts lies in the fact that the existing Labor Courts and Land Labor Courts in the Laender of the three Western Zones are not a part of the regular court system and operate under the administrative control of the Ministers of Labor. The trade unions favor Labor Ministries over Justice Ministries for several obvious reasons, one of them being the trends in the personnel developments of Laender Departments of Justice, in contrast to Departments of Labor. For example, there is in Wuerttemberg-Baden a much higher percentage of personnel in the Department of Justice, in comparison to the Department of Labor, who were chargeable at different periods under Law No. 104. The personnel contrasts between the Justice Departments and Courts on one hand, and the Department of Labor, on the other hand, are even more marked in Bavaria. One quotation from a current report will be suggestive: "On 1 July, over 75 percent of the judges and 81 percent of the prosecutors in Bavaria were chargeable under the Law for Liberation from National Socialism and Militarism, as compared with 60 percent and 73 percent in July 1947".<sup>1/</sup>

In the light of the above consideration, it is recommended that U. S. Military Government authorization be granted the German bizonal economic administration to establish a Supreme Labor Court with such relationships to the High Court and to the Ministries of Justice and Labor as the Economic Council should favor.

2. Conciliation and Arbitration. Some steps have been taken in all three of the Western Zones to implement Control Council Law No. 35. To the present very little resort has been made to these conciliation and arbitration

<sup>1/</sup> "Monthly Report of the Military Governor", 1-31 July 1948, p. 22. See also the last "Annual Report" of the Courts Branch of the Office of Military Government for Bavaria.

agencies. In the U. S. Zone, only three or four actual cases have gone to arbitration under the provisions of Control Council Law No. 35.1/

There are various reasons for the failure to use this machinery. One has been the recent creation of these agencies. Another has been the absence prior to currency reform of sufficiently important conflicts to merit a resort to conciliation or arbitration. Much more basic has been the inability and unwillingness of the Germans to accept the principles underlying and the procedure involved in conciliation and arbitration as understood in the United States and in Britain. The Germans, when left to their own devices, will probably return at an early date to the type of legislation with its compulsory features which existed prior to 1933.

Despite this prediction, there is still strong justification for continuing the efforts to acquaint German trade unionists and employers with the possibilities of voluntarily agreed upon, as distinguished from legislatively provided, non-compulsory procedures for settling industrial disputes. The efforts of the U. S. and British Manpower authorities in this direction might well be continued despite the limited results which have so far been achieved. In addition, added study of the obstacles in the way of increased use of conciliation and arbitration machinery under Control Council Law No. 35 needs to be made.

3. Works Councils. The most controversial problems today in the field of German labor relations involve the works councils. In the British Zone there have been certain British directives governing the election of works councillors 2/ but there has been no Laender legislation for implementing and supplementing the basic Control Council Law No. 22. A large percentage of the works councils in the British Zone are based on individual plant agreements which provide for a considerable amount of co-determination in social and personnel, but usually not in economic matters. Certain agreements, which have been approved by both management and the works councils in the iron and steel "severance" plants in the Ruhr have been rejected on the ground that they provided too broad a right of co-determination.

In the Rhineland-Palatinate in the French Zone, a Land Ordinance of 15 May 1947 provides the basis for a uniform system of works councils with powers of co-determination limited primarily to non-economic matters. In both Wuertemberg-Hohenzollern and Suedbaden drafts of laws providing for considerable co-determination in economic matters are either already before the Landtage or are ready for presentation.

3/ Editorial Note: Three major industrial disputes have gone to arbitration since this report was written.

2/ Arbeitsrecht, (Heidelberg), pp. 52ff.

Special attention has been directed in all of the Western Laender toward the U. S. Zone, where the proposed Works Council Law of Bremen and the Works Council Law of Hesse have been the objects of prolonged examinations. The Landtag of Wuerttemberg-Baden has recently enacted a Works Council Law, which has provided somewhat more limited powers of co-determination than either the Hesse or Bremen legislation.

It is not within my province to review the arguments and discussions concerning the Hesse Law. However, some general conclusions regarding the role and operation of the works councils may be ventured.

a. In their early operation prior to the effective organization of the trade unions, the works councils fell to a considerable extent under Communist control and pursued certain objectives which were not consistent with those of the trade unions. During this early period the works councils, being locally elected and being concerned with grievances in the plants which the workers could understand, often had a more effective hold on the plant employees than did the unions. This situation has changed, especially during the past year, and the control of the trade union over the works councils has been extended considerably, with some special exceptions as in the case of the dock workers in Hamburg. The explanation lies in the improved organization of the trade unions in the localities, in more effective trade union tactics in works councils elections and in the general decline in Communist strength. Under these circumstances the leading trade union leaders, who have been interviewed, see no basic inconsistency today between the operation and objectives of the works councils and of the unions in most localities and industries. Most trade unionists feel that the works councils can and will be utilized to play a proper subsidiary role in the plants in the future.

b. German employers and employer representatives are strongly opposed to any rights of economic co-determination of works councils. Certain ones in Bremen, for example, threaten to move their central headquarters or to "close shop" in case they are placed under the alleged competitive economic disadvantages of legislation such as that being considered in Bremen. It is their contention, and possibly their belief, that works council legislation on an interzonal basis in the future will not go beyond co-determination in social and personnel matters.

c. The controversies centering around the approval of works council legislation in Bremen and Hesse have tended to unite some trade union leaders, who were previously somewhat lukewarm in their attitude toward works councils.



and certain CDU leaders, including the Ministers of Hesse, in support of works council legislation. If the U. S. Military Government rejects the co-determination provisions in the Hesse Law 1/, this action will probably be interpreted by the trade unions not as action based on legal grounds but as the product of the application of definite economic policies. It may help harden a growing conviction among trade union leaders that the policy of the U. S. Military Government in recent months has operated to delay, and perhaps to prevent the achievement of social and economic objectives desired by the trade unions and approved by legislative majorities. A more immediate sequel might be furnish additional support for future moves to make the economic co-determination provisions of the Hesse and Bremen type the pattern for legislation to be enacted at a later date by German bizonal or trizonal governments.

d. Where the trade unions are strong enough efforts will continue to be made to secure broad rights of co-determination by voluntary agreement. One type of voluntary agreement which may well have important consequences and which will merit the closest observation is the type of agreement in operation in the public services of Schleswig-Holstein and under negotiation in Hamburg. This type of agreement, in my opinion, goes well beyond the Whitley Council pattern, to which it has been compared, and may lead to some of the same undesirable consequences arising out of French administrative syndicalism prior to World War I.

1/ Editorial Note: Except for the economic sections, the Hesse and Wuertemberg-Baden Works Council Laws have been approved by Military Government and were promulgated on 1 and 2 October 1948 respectively. The sections dealing with the right of economic co-determination were suspended by Military Government pending determination in the Basic Law (provisional constitution) of the division of powers between the central government and the Land governments. If the power to legislate in these fields is left to the Laender, then the suspended sections would become effective.

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